

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5178 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMRATBHAI RAMABHAI VAGHRI

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MS.SIDDHI TALATI, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the detention order dated 18.6.1998 passed by the Commissioner of Police, Ahmedabad City under section 3(2) of the Prevention of Antisocial Activities Act (for short PASA) is under challenge. The prayer is for quashing the said order and also for releasing the petitioner from illegal detention.

The brief facts are that the Detaining Authority aforesaid after considering 8 cases registered against the petitioner under Bombay Prohibition Act and further considering the statements of two confidential witnesses came to the conclusion that the petitioner is bootlegger and his antisocial activities were prejudicial for maintenance of public order. Accordingly, the impugned order was passed.

This order is under challenge on two grounds. The first is that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order and the second ground is that the representation of the detenu petitioner sent by the Advocate was returned by the State Government without any consideration on technical ground that signature or thumb impression of the detenu be obtained and it should be resubmitted for consideration. According to the learned Counsel for the petitioner this stand is unjustified.

Coming to the first point viz. whether the activities of the petitioner were prejudicial for maintenance of public order or not, the eight registered criminal cases under various sections of the Bombay Prohibition Act cannot be said to be incidents prejudicial for maintenance of public order, because it is not intimated in the grounds of detention that on either of these eight occasions, when the premises of the petitioner was raided he created any obstruction to the search and seizure or created situation prejudicial for maintenance of public order. As such, these incidents of eight cases could not be pressed in service for arriving at subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order.

These cases and the statements of two confidential witnesses can safely be pressed in service for reaching subjective satisfaction that the petitioner is bootlegger.

However, even the two incidents narrated by the two witnesses cannot be said to be the incidents in which public order was disturbed or was likely to be disturbed. The narration of the witnesses on these two incidents is justlike narration in a cinema film. Both the witnesses have stated that razor/knife was touched on the person of the victim but there was no corresponding injury which was a situation hardly difficult to appreciate. Minor scuffle on the face value between the petitioner and the

witness cannot be said to have created situation adverse to maintenance of public order. If the two witnesses gave correct statement in that event the incident did not travel beyond the situation prejudicial for maintenance of law and order. As such the detention of the petitioner under PASA is rendered illegal.

The second ground is that the representation dated 30.6.98 sent by the Advocate of the detenu was returned by the State Government without any consideration with technical objection that signature/thumb impression of the detenu was missing which should be obtained and the same be resubmitted for consideration. Of course the representation was not resubmitted after making the desired compliance, but this failure of the petitioner is no ground for giving strength to the stand of the respondent that because of inaction on the part of the detenu that the representation remained pending. The representation was sent by an Advocate under instructions of the detenu. As such, signature or thumb impression of the detenu was not required. Non consideration of representation of the detenu on technical ground has rendered his detention as well as continued detention illegal for which the case of Balchand Chorasias Vs. Union of India AIR 1978 SC 297 can be referred.

Thus, for the reasons stated above the impugned order of detention cannot be sustained. The writ petition therefore succeeds and is hereby allowed. The impugned order of detention dated 18.6.1998 is hereby quashed. The petitioner shall be released from custody forthwith unless wanted in some other case.

(D.C.Srivastava, J)

m.m.bhatt